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## FISCAL IMPACT REPORT

SPONSOR: Lujan DATE TYPED: 2/11/03 HB 420/aSFI#1

SHORT TITLE: Voter Action Act SB \_\_\_\_\_

ANALYST: Chavez

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$300.0 See Narrative		Recurring	New Public Election Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SB 222

### SOURCES OF INFORMATION

Public Regulation Commission (PRC)  
 Secretary of State (SOS)  
 Attorney General's Office (AG)  
 LFC Files

### SUMMARY

#### Synopsis of SFI Amendment #1

The Senate Floor Amendment relates to the amount of fund distribution for contested primary, uncontested primary, contested general and uncontested general elections and provides that the amount of money to be distributed is equal to the average amount of campaign expenditures adjusted for inflation and, in reference to this calculation, looks at the immediately preceding primary or general election.

#### Synopsis of HAFC Amendment

The House Appropriation and Finance Committee Amendment deletes language pertaining to in-kind contributions by a political party which states that these contributions shall not be considered an improper party contribution or count against the ten percent limit. House Bill 420 limits a political party's contributions (in kind and monetary) to no more than ten percent of the candidate's public financing.

Synopsis of Original Bill

House Bill 420 proposes campaign financing of elections for commissioners of the Public Regulation Commission through a “public election fund” with money provided by:

1. utilities and insurance companies;
2. qualifying contributions that have been submitted to the secretary;
3. any recurring balance of unspent fund money distributed to a certified candidate who does not remain a candidate through the primary or general election period;
4. money that remains unspent or unencumbered by a certified candidate following the date of the primary election;
5. money that remains unspent or unencumbered by a certified candidate following the date of the general election;
6. unspent seed money that cannot be used for any other purpose; and
7. money appropriated by the legislature.

House Bill 420 would enact a new unnumbered section of the Election Code, cited as the “Voter Action Act”.

**Section 2** provides definitions for terms used in the Voter Action Act, (“the Act”).

**Section 3** requires a candidate choosing to obtain public financing under the Act to first file with the Secretary of State and to have not received or spent more than \$500 in contributions.

**Section 4** requires applicant candidates to obtain qualifying contributions from the number of registered voters equal to at least one-quarter percent of the total vote cast in the last general election for all candidates for governor in the district in which the candidate is running. No payment, gift or anything of value shall be given in exchange for a qualifying contribution.

**Section 5** allows an applicant candidate to collect seed money from individual donors and political action committees in amounts of no more than \$100 per donor or committee, up to a maximum total of \$5,000. The applicant can use his own funds, also up to this total, but cannot accept donations from a corporation, association, partnership or labor organization.

**Section 6** requires the Secretary of State to determine whether an applicant candidate’s final submittal of qualifying contribution meets the requirements of the Act and to certify the candidate within 10 days if the requirements of the Section are met.

**Section 7** requires that all money distributed to a certified candidate be used for the candidate’s campaign-related purposes, with the surplus returned to the public election fund. The candidate shall limit the total campaign expenses and debts to the amount received from the fund. A certified candidate shall not accept contributions or loans from any other source except his political party.

**Section 8** limits a political party’s contributions (in-kind and monetary) to no more than ten percent of the candidate’s public financing. Nothing in this section shall prevent political party funds from being used for general operating expenses of the party.

**Section 9** requires the Secretary of State to publish guidelines outlining permissible campaign-

related expenditures. Applicant candidates shall file a report listing seed money contributions and expenditures with their application for certification. Ten days before a primary or general election, all non-certified candidates with a certified opponent must report to the Secretary the amount spent by that non-certified candidate. A person or political committee that spends money to influence a race involving a certified candidate must report to the Secretary the amount spent.

**Section 10** would create in the state treasury the public election fund for the purposes of financing the election campaigns of certified candidates for covered offices. The fund would receive \$300,000 per year segregated from the proceeds collected as follows: \$100,000 from inspection and supervision fees, \$100,000 from utility and carrier inspection fees and \$100,000 from insurance premium taxes. In addition money appropriated by the legislature would be included in the fund. The fund would also collect qualifying contributions submitted to the secretary of state, unspent money from candidates and unspent seed money.

**Section 11** requires the Secretary by January 1, 2007, and every two years thereafter to give the legislature a report evaluating and making recommendations on the Voter Action Act, including the amount of the annual appropriation from the legislature needed for expected costs for the next election cycle.

**Section 12** requires the Secretary to distribute money from the fund to certified candidates beginning with the general election cycle that ends with the general election in 2006.

**Section 13** requires the Secretary to determine by April 1, 2005 the amount of money to be distributed to each certified candidate for the 2006 election cycle, with different amounts provided for contested and uncontested races, and for primaries and general elections.

**Section 14** requires the Secretary to distribute additional funds to a certified candidate with a non-certified candidate opponent who raises or spends an amount greater than that distributed to the certified candidate. The additional amount can be up to the original amount provided to the certified candidate.

**Section 15** requires the Secretary to adopt rules to ensure effective administration of the Voter Action Act.

**Section 16** provides a procedure for challenging a certification decision by the Secretary. An appeal can be taken to the district court. A party found by the court or Secretary to have made a frivolous appeal has to pay all costs involved.

**Section 17** provides for a civil penalty of up to \$10.0 for a violation of the Voter Action Act. In addition to a fine, a certified candidate found in violation of the Act may be required to return to the fund all amounts distributed to the candidate from the fund.

**Section 18** would amend Section 59A-6-2 NMSA 1978 to increase by three-thousandths of a percent the premium tax paid by insurers authorized to transact insurance in New Mexico.

**Section 19** would add the Voter Action Act to the list of moneys in Section 59A-6-5 NMSA 1978 to be paid daily by the insurance superintendent to the state treasurer.

*Sections 20 and 21* provides a higher ceiling for the utility and carrier inspection fees (Section 63-7-20) and would make small increases for inspection and supervision fees (Section 62-8-8 NMSA 1978).

*Section 22* is a severability clause providing that if any part of or application of the Voter Action Act is held invalid, the remainder of its provisions or its application to other situations or persons shall not be affected.

*Section 23* makes the effective date of this bill July 1, 2003.

#### Significant Issues

The bill proposes to create a public election fund to be funded at \$300.0 comprised of three fees; inspection and supervision fees, utility and carrier inspection fees and insurance premium tax collected which currently go to the general fund. The bill proposes fee increases, to offset any general fund impact. However, the estimated incremental revenue could be greater or less than the appropriation contained within the specific fee categories (see attachment). For example, the utility and carrier inspection fees could have incremental revenue of \$183.0 which is greater than the \$100,000 appropriated from these fees. However, the estimated incremental revenue for inspection and supervision fees and the premium tax fees will be \$49.0 and \$11.0 less than the appropriated amount from these fees respectively.

#### **FISCAL IMPLICATIONS**

The Secretary of State (SOS) indicates that a high-level auditor must be hired as an FTE, otherwise performance of the agency will be compromised. However, this will not come out of the general fund, Section 10, subparagraph A states that the **public election fund** will be used to pay for administrative and enforcement costs of the Voter Action Act.

#### **ADMINISTRATIVE IMPLICATIONS**

The SOS indicates that one FTE auditor would be needed to administer this proposed legislation.

#### **DUPLICATION**

House Bill 420 is identical to Senate Bill 222.

#### **TECHNICAL ISSUES**

**\*\*\*It should be noted that the method for the distribution of funds should not be allocated as a dollar amount but the amount should be allocated in terms of the percentage increase for each of the fees.**

1. The Attorney General's Office indicates that regarding Section 8, subsection C (page 10, line 5) the term "campaign period" is used but the term is not defined in Section 2 of the bill.
2. With regard to the appeal process, discussed on the bottom of page 19 and continuing on page 20, it appears that the Secretary will hold a hearing, whereby the appellant has the

burden of providing evidence to demonstrate that the Secretary's decision was improper; and the Secretary shall rule on the appeal. There may be a need for an independent review with an impartial decision-maker who is free from bias. This may also preserve judicial resources by reducing the number of actions commencing in district court following an appeal regarding the decision of the Secretary.

3. It is the suggestion of the Public Regulation Commission that in regards to Section 16, subparagraph D, it is not clear whether it is the intent of House Bill 420 to authorize the Secretary of State or a court to additionally award attorney fees to the opposing parties when a frivolously appeal was made. It is suggested that if this is the intent it should be clearly stated since courts will not imply such an intent.

### **POSSIBLE QUESTIONS**

1. Should the election for commissioners of the Public Regulation Commission be publicly funded ?

**FC/njw**